

Role of the Judicial Law Clerk



Office of the Chief Immigration Judge
Assistant Chief Immigration Judge Jack H. Weil
October 16, 2018

Resolve Disputes Timely & Fairly



Disputes of Fact

Disputes of Law



Examples of Disputes in Immigration Proceedings

- [REDACTED]
[REDACTED]
 - Removability
 - Inadmissibility - section 212 of INA
 - Deportability – section 237 of INA
 - Eligibility for relief
 - Custody & Bond
 - Other (e.g., motions, competence)
[REDACTED]



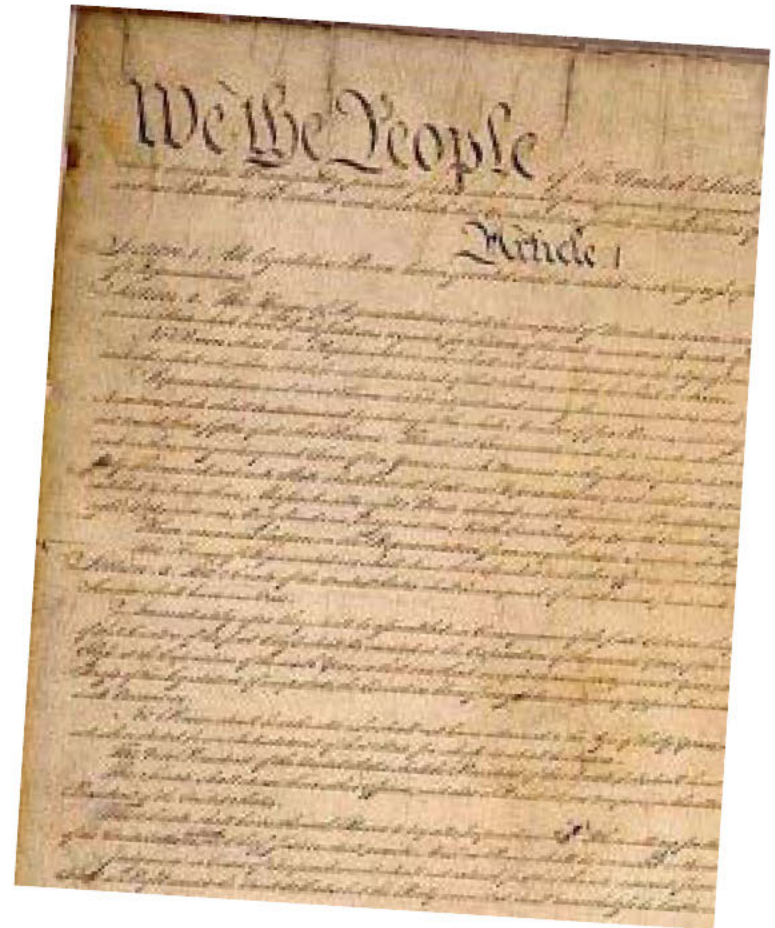
Resolution by Due Process

Due process requires that the proceeding be fundamentally fair.



Sources of Due Process

The U.S. Constitution guarantees a fair judicial procedure and bars states from depriving one of life, liberty or property without due process of law.



Principles of Judicial Conduct



A judge shall perform the duties of judicial office impartially and diligently.

A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice including but not limited to bias or prejudice based upon....

Principles of Judicial Conduct

Fair Process & Fair Adjudicator

Whether a party perceives that a proceeding is fair generally depends on two things:

- 1) whether they believe that the adjudicator was fair, and**
- 2) whether they believe the process was fair.**

Fairness to Participants: Roles in the Process

- Immigration Judge
- Judicial Law Clerk
- Legal Technician/Legal Assistant
- Interpreter
- DHS Counsel
- Respondent's Counsel
- Witnesses
- Detention Officers
- Court Administrator
- LOP Provider



Fairness to Participants: Common Terminology

- Proceeding and hearing [REDACTED]
[REDACTED]
- Respondent
- ROP
- Alien
- BIA
- Qualified representative
- Pleading
- Relief [REDACTED]



The fair administration of justice is based upon two principles:

1. Actual
Fairness

2. Perceived
Fairness



A “perception” is...

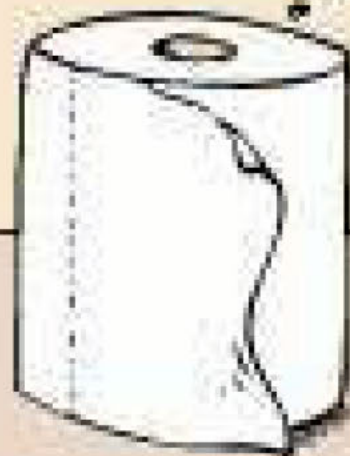
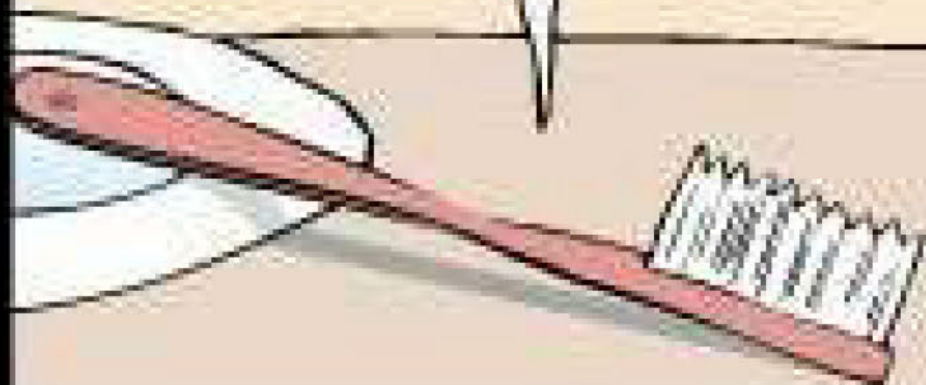
1. A recognizable impression received by the mind through the senses (i.e., to become aware of through sight, hearing, touch, taste, or smell);
2. A feeling or observation obtained through the use of one's senses.

A perception is a function of the way we select, organize, and interpret information.

In other words, people use their senses to collect data or information about the courts and court procedures. They then select this data, organize it, interpret the data, and draw conclusions about what they believe to be true or not about the courts.

SOMETIMES
I FEEL
THAT I
HAVE THE
WORST JOB
IN THE
WORLD!

YA...RIGHT!



TyPee.com

The public has
a good deal of
trust and
confidence in
the courts.





Four Main Elements of Procedural Due Process

Neutrality

Decision makers who are honest, impartial & base decisions in fact & law.

Interpersonal Respect

Being treated with dignity and respect & having one's rights protected.

Rights in an Immigration Proceeding & Advisals

- Written copy of NTA & [REDACTED] explanation in plain language
- Wait 10 days before court
- Limited right (privilege) of representation
- Evidentiary rights
- Appeal rights
- Others [REDACTED]





Four Main Elements of Procedural Due Process

Neutrality

Decision makers who are honest, impartial & base decisions in fact & law.

Interpersonal Respect

Being treated with dignity and respect & having one's rights protected.

Participation

The opportunity to express one's views.

Understanding

Understanding the process & the decision.

Your Role: Ensuring Fairness from the Start

U. S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No. [REDACTED]
(b) (6)

In the Matter of:

Respondent: (b) (6) currently residing at:
SERVICE PROCESSING CENTER, ICE 1115 NORTH IMPERIAL AVENUE
EL CENTRO CALIFORNIA 92243 (760) 336-4600
(Number, street, city state and ZIP code) (Area code and phone number)

- ☐ 1. You are an arriving alien.
☒ 2. You are an alien present in the United States who has not been admitted or paroled.
☐ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

Department of Justice
Executive Office For
Immigration Review

SEP 23 2005

The Service alleges that you:

U.S. Immigration Court
El Centro, California
Received By: _____

- 1) You are not a citizen or national of the United States;
- 2) You are a native of MEXICO and a citizen of MEXICO;
- 3) You arrived in the United States at or near Calexico, California, on or about September 16, 2005;
- 4) You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

112(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- ☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

"TO BE CALENDARED AND NOTICE PROVIDED BY THE OFFICE OF THE IMMIGRATION JUDGE." 1115 N. Imperial Ave., El Centro, CA 92243

(Complete Address of Immigration Court, Including Room Number, if any)

on a date to be set at a time to be set to show why you should not be removed from the United States based on the charge(s) set forth above.
(Date) (Time)

EXHIBIT#
DATE
I.D. ONLY ADMITTED

(b) (7)(C)

Calexico, California

(City and State)

Date: September 16, 2005

See reverse for important information

Form I-862 (Rev. 3/22/99)N

Notice to Appear



Notice: Start with a Level Playing Field



- Notice/Service of allegations & charges
- Notice of Hearing
- Notice of rights & obligations

Proper service?



A Notice to Appear can be served by personal service or regular mail.

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

X

(b) (6)

(Signature of Respondent)

Before (b) (7)(C)

Date: 1/22/03

Certificate of Service

This Notice to Appear was served on the respondent on January 22, 2003, in the following manner and in compliance with section 239(a)(1)(F) of the Act:

(Date)

- ☒ in person ☐ by certified mail, return receipt requested ☐ by regular mail
- ☐ Attached is a credible fear worksheet.
- ☐ Attached is a list of organizations and attorneys which provide free legal services.

The alien was provided oral notice in the Chinese language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

X

(b) (6)

(Signature of Respondent if Personally Served)

(b) (7)(C)

Reversal for Abuse of Discretion

The touchstone of due process is protection of the individual against **arbitrary action** of government.


Wolff v. McDonnell,
418 U.S. 539, 558
(1974).



Foundation of the Judicial System



The authority of a tribunal rests on public acceptance of judicial decisions.

The background of the image is a close-up, slightly blurred view of the American flag. The blue field with white stars is visible in the upper left corner, while the red and white stripes dominate the rest of the frame. The flag appears to be draped or waving, creating a sense of movement and texture.

American freedoms and prosperity are linked to a 200-year old tradition of respect for the law.